

The Rt. Hon. the Lord Owen CH FRCP

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House of Lords,
Westminster,
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Mr Christopher Graham
Information Commissioner
Wycliffe House
Water Lane
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24 May 2011

Dear Mr Graham

I am writing to complain to you about the advice I have been given on a FOI application to the Department of Health, a copy of which I enclose. I realise that generally you would prefer me to exhaust the complaints procedure provided by the Department and go for an internal review but, as I am sure you are aware, it would be extremely helpful to have this matter cleared up about the legal advice given on EU competition law and, even more important, EU procurement law before the 'listening' phase of the review of the Health and Social Care Bill is complete.

I will be taking up as a separate matter as to whether the Labour Party in Opposition should pursue the issue of making public the advice that was given to them when in government in 2007 on the application of EU competition law during the process of establishing the Cooperation and Competition Panel. My specific request to you would be to rule that any legal advice, even though integral to the Department's advice to Ministers that related to the implication of "any willing provider" in relation to the Health and Social Care Bill, should be revealed and that it is sufficiently specific to be separated out from the rest of the legal advice given to Departmental Ministers on the introduction of the Health and Social Care Bill.

It is in my view urgent because it is very difficult to take a view on the implications of some of the elements of the Health and Social Care Bill without knowing its EU implications. It is relevant because the Government have admitted, by establishing the review and by subsequent statements, that they intend to submit to the House of Commons at Report Stage substantive amendments.

It would not, in my view, create a precedent for you to rule in advance of an internal review because the situation of a Government making substantive amendments as a result of a deliberate pause in the legislative process between the ending of Committee Stage and Third Reading is itself unprecedented.

Yours sincerely


DAVID OWEN